

**FIBICH, HAMPTON, LEEBRON,
BRIGGS & JOSEPHSON, L.L.P.**

Michael Josephson

(pro hac vice)

Texas Bar No. 24014780

mjosephson@fhl-law.com

1150 Bissonnet

Houston, TX 77005

(713)751-0025 (Telephone)

(713)751-0030 (Facsimile)

BRYAN SCHWARTZ LAW

BRYAN SCHWARTZ (SBN 209903)

Bryan@BryanSchwartzLaw.com

1330 Broadway, Suite 1630

Oakland, CA 94612

(510) 444-9300 (Telephone)

(510) 444-9301 (Fax)

ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**REBECCA SANCHEZ, individually
and on behalf of all others similarly
situated;**

Plaintiffs,

vs.

SEPHORA USA, INC.

Defendant.

§ **Case No. CV 11 3396 SBA**
§
§ **PLAINTIFFS' UNOPPOSED**
§ **MOTION IN SUPPORT OF**
§ **APPROVAL OF SETTLEMENT**
§ **UNDER FAIR LABOR STANDARDS**
§ **ACT AND FOR CONDITIONAL**
§ **DISMISSAL**

§ **Hearing Date: May 20, 2014 - 1:00 PM**
§ **Hon. Sandra Brown Armstrong**
§

I. INTRODUCTION

This is a lawsuit to recover unpaid overtime wages brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* Plaintiff Rebecca Sanchez (“Plaintiff”) filed this lawsuit against Defendant Sephora USA, Inc. (“Defendant” or “Sephora”) alleging that she and current and former Specialists were improperly classified as exempt and as a result were not paid overtime compensation for all hours worked in excess of forty hours per week. The Court conditionally certified this lawsuit as a collective action on July 18, 2012.

After months of discovery and exchanging information, the parties have agreed to resolve the claims at issue for \$175,756.85, inclusive of attorneys’ fees and costs. The specific terms of the settlement are set forth in the attached Stipulation as Exhibit A. As the Stipulation indicates, there are no issues or claims being asserted under Fed. R. Civ. P. 23 and there are no absent class members. Instead, only the Plaintiff and the Opt-In Plaintiffs who affirmatively joined this lawsuit are impacted by the settlement.

This settlement the result of arm’s length bargaining by competent counsel with extensive wage and hour experience, and a high level of familiarity and understanding of the relevant facts and legal issues applicable to these cases. The parties believe that the settlement is fair and reasonable and in the best interests of the Class Members. The parties also believe that the settlement resolves *bona fide* disputes between the parties, including whether Defendant’s payment practices violated the FLSA.

II. GENERAL TERMS

As described above, Plaintiff and Defendant have agreed to settle this matter for \$175,756.85, inclusive of attorneys’ fees and costs. The specific details of the settlement are set forth in Exhibit A.

1 **A. Settlement Amount and Distribution**

2 The proposed settlement obligates Defendant to pay a maximum potential settlement amount
3 of \$175,756.85. From this amount, all claims, including claims for attorneys' fees and costs, will be
4 deducted.

5 The gross settlement amount of \$175,756.85 will be disbursed as follows:

- 6
- 7 • Attorneys' fees (33.3%): \$58,527.03
 - 8 • Litigation costs: \$12,000.00
- 9 **Total \$70,527.03**

10 The deduction of attorneys' fees and costs produces a "Settlement Sum Variable" in the
11 amount of \$105,229.82. The parties will divide this amount by the total number of Qualifying Work
12 Weeks for the Plaintiffs. This will produce a work week value.

13 The Plaintiffs will be compensated based on his/her workweeks as a Specialist during
14 his/her applicable statutory time period. The following formulas will be used for the distribution of
15 any compensation to the Plaintiffs:

16 **Weeks Worked x Workweek Amount = Payment**

17

18 Fifty percent (50%) of the total payment to that Participating
19 Claimant shall be deemed payment in settlement of claims for unpaid
20 overtime or other wages and is subject to appropriate deductions and
21 withholdings for wages by the Claims Administrator. Fifty percent
(50%) shall be deemed payment in settlement of claims for liquidated
damages, interest, and all other non-wage income.

22 The spreadsheet attached as Exhibit B describes the compensation that each Plaintiff is
23 expected to receive based on the formula negotiated by the parties. In order to protect the privacy
24 of the specific Plaintiff, the names of the individuals have been redacted.

25 **B. Release**

26 In exchange for the settlement, the Plaintiffs will release Defendant from all wage related
27 claims asserted or that could have been asserted in this lawsuit. Exhibit A(4) specifically describes the
28

1 scope of the wage and hour release.

2 **III. COURT APPROVAL**

3 The parties are now seeking Court of approval of this proposed settlement under the FLSA
 4 only. *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697 (1945)(requiring Court or Department of
 5 Labor approval for FLSA settlements, and explaining the low standard for judicial review when the
 6 parties are represented by counsel); *Camp v. The Progressive Corp, et al*, 2004 WL 2149079 (E.D.
 7 La. 2004); *see also Evans v. Jeff D.*, 475 U.S. 717. 726-27 (1986)(in deciding whether the proposed
 8 settlement reflects a “reasonable compromise” of a bona fide dispute, the Court may either accept or
 9 reject it, but should not require the parties to accept any revisions or modifications to the
 10 agreement).

11
 12 The parties believe that the terms and conditions of this Settlement are fair, reasonable,
 13 adequate, beneficial and in the best interests of the Plaintiffs. As noted above, this proposed
 14 settlement was reached following extensive discovery and briefing concerning the merits of the
 15 case. Because of the various defenses asserted by Defendant and the possibility that Defendant may
 16 have successfully defeated some or all of Plaintiffs’ claims, including those claims related to
 17 willfulness, liquidated damages and compensation for unpaid overtime, the parties believe that the
 18 settlement represents a fair compromise of the claims. Moreover, given the strong likelihood that
 19 absent a settlement, this case would have proceeded to trial, a compromise of the claims prevents all
 20 parties from incurring the additional costs and delay associated with trial and appeal.

21 **IV. CONDITIONAL DISMISSAL**

22 Plaintiff requests the Court enter a conditional dismissal motion and that, upon the Court’s
 23 receipt of a joint motion to dismiss to be filed no later than 60 days after the disbursement of the balance
 24
 25
 26
 27
 28

1 of the payments as specified in the attached Stipulation, the Court enter a final order dismissing with
2 prejudice the claims of all Plaintiffs in this lawsuit according to the terms of the Stipulation.

3 **V. CONCLUSION**

4 For all of the foregoing reasons, Plaintiff requests that this Court (a) approve the FLSA
5 settlement, including all of the terms set forth in the attached Stipulation; and (b) enter the Order
6 attached hereto as Exhibit A(3).
7

8
9 **FIBICH, HAMPTON, LEEBRON,
BRIGGS & JOSEPHSON, LLP**

10 /s/ Michael A. Josephson

11 Dated: April 14, 2014

Michael A. Josephson
Attorney for Plaintiffs
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE

I declare that I am employed in the County of Harris, State of Texas. I am 18 years of age or older and not a party to the within entitled cause; my business address is 1150 Bissonnet, Houston, Texas 77005. On this date, I served a true and correct copy of **PLAINTIFFS' UNOPPOSED MOTION IN SUPPORT OF SETTLEMENT UNDER FAIR LABOR STANDARDS ACT AND FOR CONDITIONAL DISMISSAL**), by placing a true copy thereof enclosed in a sealed envelope and served as follows:

 X United States mail by placing such envelope(s) with postage fully prepaid in the designated area for outgoing mail in accordance with this office's practice, whereby the mail is deposited in a United States mailbox in the City of Houston, Texas, after the close of the day's business.

 E-mail by delivering on the parties listed herein at their most recent known e-mail address or email of record in this action.

 Express Mail

 Facsimile

 Personal Service

 Express Service Carrier by depositing in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with deliver fees paid or provided.

Said envelope was addressed to the party/parties and/or counsel as indicated below:

Andrew R. Livingston
Brooke Arena
Aubry R. Holland
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed at Houston, Texas, on April 14, 2014.

/s/ Mirna Estopier-Ayala
Mirna Estopier-Ayala